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January 31, 2007

Ms. Magalie R. Salas, Secretary
 Federal Energy Regulatory Commission
 888 First Street, NE
 Washington, D. C. 20426

**Subject: Final Section 4(e) Conditions
 Oroville Facilities Project No. 2100-134**

Dear Ms. Salas:

The Federal Energy Regulatory Commission (FERC) Office of Energy Products staff issued a Draft Environmental Impact Statement (DEIS) for the Oroville Facilities FERC Project No. 2100-134 on September 29, 2006. A portion of the project is located on lands of the Plumas and Lassen National Forests managed by the USDA Forest Service. The following comments and conditions comprise the report of the Secretary of Agriculture in accordance with section 4(e) of the Federal Power Act.

This project does not conflict with any project of which we are aware that should be or has been constructed by the United States. It neither interferes with nor is inconsistent with the purposes for which the Plumas National Forest or Lassen National Forest were created or acquired. We have no objection to a license being issued, subject to certain conditions necessary for the protection and utilization of National Forest System lands and resources affected by the project.

We filed preliminary conditions on March 29, 2006. These preliminary conditions have been modified to reflect changes and clarifications that resulted from other proceedings under the new Energy Policy Act rules. Enclosure 1 contains the final conditions approved by the Regional Forester, Pacific Southwest Region, to be included in the license, necessary for the protection and utilization of the affected National Forest System lands. Enclosure 2 provides a crosswalk between the preliminary and final conditions. The conditions are based on the Forest Service review of the application, extensive coordination with Federal and State agencies and others, public comment, and consultation with the licensee. These conditions are consistent with the goals, objectives, standards, and guidelines of the *Plumas National Forest Land and Resource Management Plan* and the *Lassen National Forest Land and Resource Management Plan*. These conditions are also consistent with the Oroville Facilities Relicensing Settlement Agreement. Under authority delegated from the Secretary of Agriculture, the Regional Forester considers these conditions necessary to avoid or mitigate resource and environmental impacts caused by proposed project operations.

A rationale document that describes the information and process used to develop the section 4(e) conditions has previously been filed with FERC.

Please contact Cheryl Mulder, Plumas National Forest (530-283-7771), if you have questions.

Respectfully submitted,

/s/ Joshua S. Rider
Joshua S. Rider
Attorney for the Forest Service

Enclosures

cc: Jim Peña, Forest Supervisor, Plumas NF
Cheryl Mulder, Plumas NF
Bob Hawkins, RHAT
Service List

FINAL LICENSE TERMS AND CONDITIONS
NECESSARY FOR THE PROTECTION AND UTILIZATION
OF THE LASSEN AND PLUMAS NATIONAL FORESTS
IN CONNECTION WITH
THE APPLICATION FOR LICENSE

**Oroville Facilities
FERC No. 2100**

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ENCLOSURE 1

PACIFIC SOUTHWEST REGION, USDA FOREST SERVICE FINAL 4(E) TERMS AND CONDITIONS NECESSARY FOR THE PROTECTION AND UTILIZATION OF THE LASSEN AND PLUMAS NATIONAL FORESTS OROVILLE FACILITIES FERC PROJECT No. 2100

I. Introduction

The Forest Service (FS) provides the following Final Section 4(e) Conditions (Conditions) for the Oroville Facilities project, FERC No. 2100 in accordance with 18 CFR 4.34(b)(1)(i). The Forest Service is also submitting "Recommendations", as allowed under Section 10(a) of the Federal Power Act. The "Recommendations" are applicable to areas where project effects do not directly affect NFS lands, and are optional for consideration by the FERC, as the lead federal agency. The "Recommendations" are shown in Enclosure 1 as italicized text.

Section 4(e) of the Federal Power Act states the Commission may issue a license for a project within a reservation only if it finds that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired. This is an independent threshold determination made by FERC, with the purpose of the reservation defined by the authorizing legislation or proclamation (see *Rainsong v. FERC*, 106 F.3d 269 (9th Cir. 1977)). The FS, for its protection and utilization determination under Section 4(e) of the FPA may rely on broader purposes than those contained in the original authorizing statutes and proclamations in prescribing conditions (see *Southern California Edison v. FERC*, 116F.3d 507 (D.C. Cir. 1997)).

The following terms and conditions are based on those resource and management requirements enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), and any other law specifically establishing a unit of the National Forest System or prescribing the management thereof (such as the Wilderness Act or the Wild and Scenic River Act), as such laws may be amended from time to time, and as implemented by regulations and approved Land and Resource Management Plans prepared in accordance with the National Forest Management Act. Specifically, the 4(e) conditions are based on the Land and Resource Management Plan (as amended) for the Plumas National Forest (and portions of the Lassen National Forest administered by the Plumas), as approved by the Regional Forester of the Pacific Southwest

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Region.

Pursuant to Section 4(e) of the Federal Power Act, the Secretary of Agriculture, acting by and through the Forest Service, considers the following conditions necessary for the adequate protection and utilization of the land and resources of the Lassen and Plumas National Forests. License articles contained in the Federal Energy Regulatory Commission's (Commission) Standard "L" Forms (revised October 1975) issued by Order No. 540, dated October 31, 1975, and incorporated into this license, cover general requirements. In addition, this document includes both administrative provisions (Section II) and specific resource requirements (Section III) deemed necessary for protection and utilization of National Forest System lands and resources.

II. Administrative Provisions

Condition No. 1-Forest Service Reserves the Right to Revise Section 4(e) Conditions

The Forest Service reserves the right to modify final Section 4(e) conditions submitted to FERC for inclusion in the new license for the Oroville Facilities, FERC No.2100, to resolve any conflict between FS 4(e) conditions and: 1) water quality certificate conditions issued by the State of California Department of Water Resources Control Board, 2) Section 18 conditions issued by the National Oceanographic and Atmospheric Administration Fisheries Service, or 3) terms and conditions imposed by existing or revised U.S. Fish and Wildlife Service Biological Opinion issued for the relicensing of the Project.

Condition No. 2—Approval of Changes

Notwithstanding any license authorization to make changes to the project, when such changes directly affect National Forest System lands the Licensee shall obtain written approval from the Forest Service prior to making any changes in any constructed project features or facilities, or in the uses of project lands and waters or any departure from the requirements of any approved exhibits filed with the Commission. Following receipt of such approval from the Forest Service, and a minimum of 60-days prior to initiating any such changes, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest Service for such changes. The Licensee shall file an exact copy of this report with the Forest Service at the same time it is filed with the Commission. This article does not relieve the Licensee from the amendment or other requirements of Article 2 or Article 3 of this license.

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Condition No. 3—Surrender of License or Transfer of Ownership

Prior to any surrender of this license, the Licensee shall provide assurance acceptable to the Forest Service that Licensee shall restore any project area directly affecting National Forest System lands to a condition satisfactory to the Forest Service upon or after surrender of the license, as appropriate. To the extent restoration is required, Licensee shall prepare a restoration plan which shall identify the measures to be taken to restore such National Forest System lands and shall include or identify adequate financial mechanisms to ensure performance of the restoration measures.

In the event of any transfer of the license or sale of the project, the Licensee shall assure that, in a manner satisfactory to the Forest Service, the Licensee or transferee will provide for the costs of surrender and restoration. If deemed necessary by the Forest Service to assist it in evaluating the Licensee's proposal, the Licensee shall conduct an analysis, using experts approved by the Forest Service, to estimate the potential costs associated with surrender and restoration of any project area directly affecting National Forest System lands to Forest Service specifications. In addition, the Forest Service may require the Licensee to pay for an independent audit of the transferee to assist the Forest Service in determining whether the transferee has the financial ability to fund the surrender and restoration work specified in the analysis.

Condition No. 4— Fire Prevention, Response, and Investigation

Within one year of license issuance the Licensee shall file with the Commission a Fire Prevention and Response Plan for National Forest System lands within the Project that is approved by the Forest Service, and developed in consultation with appropriate State and local fire agencies. The plan shall set forth in detail the Licensee's responsibility for the prevention, reporting, control, and extinguishing of fires in the vicinity of the project resulting from project operations.

At a minimum the plan shall address the following categories:

1. Prevention: Availability of fire access roads, community road escape routes, helispots to allow aerial firefighting assistance in the steep canyon, water drafting sites and other fire suppression strategies. Address fire danger and public safety associated with project induced recreation, including fire danger associated with dispersed camping, existing and proposed developed recreation sites, trails, and vehicle access.
2. Emergency Response Preparedness: Analyze fire prevention needs including equipment and

personnel availability.

3. Reporting: Licensee shall report any project related fires to the Forest Service within 24 hours.

4. Fire Control/Extinguishing: Provide the Forest Service a list of the locations of available fire suppression equipment and the location and availability of fire suppression personnel.

Investigation of Project Related Fires

The Licensee agrees to fully cooperate with the Forest Service on all fire Investigations. The Licensee shall produce upon request all materials and witnesses not subject to the attorney-client or attorney work product privileges, over which the Licensee has control, related to the fire and its investigation including:

- All investigation reports
- All witness statements
- All photographs
- All drawings
- All analysis of cause and origin
- All other, similar materials and documents regardless of how collected or maintained_

The Licensee shall preserve all physical evidence, and give custody to the Forest Service of all physical evidence requested. The Forest Service shall provide the Licensee with reasonable access to the physical evidence and documents the Licensee requires in order to defend any and all claims, which may arise from a fire resulting from project operations, to the extent such access is not precluded by ongoing criminal or civil litigation

Condition No. 5- Access by the United States

The United States shall have unrestricted use of any road over which the Licensee has control within the project area for all purposes deemed necessary and desirable in connection with the protection, administration, management, and utilization of Federal lands or resources. When needed for the protection, administration, and management of Federal lands or resources the United States shall have the right to extend rights and privileges for use of the right-of-way and road thereon to States and local subdivisions thereof, as well as to other users. The United States shall control such use so as not to unreasonably interfere with the safety or security uses, or cause the Licensee to bear a share of costs disproportionate to the Licensee's use in comparison to the use of the road by others.

Condition No. 6—Maintenance of Improvements on or Affecting National Forest System Lands

The Licensee shall maintain all its improvements and premises on or affecting National Forest System (NFS) lands to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the Forest Service. Disposal will be at an approved existing location, except as otherwise agreed by the Forest Service.

Condition No. 7—Pesticide Use Restrictions on National Forest Lands

Pesticides may not be used on NFS lands or in areas affecting NFS lands to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, trash fish, etc., without the prior written approval of the Forest Service. During the Annual Consultation meeting described in Condition 15, the Licensee shall submit a request for approval of planned uses of pesticides for the upcoming year. The Licensee shall provide information essential for review including specific locations and timeframes for application. Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the report was submitted. In such an instance, an emergency request and approval may be made.

As an alternative, the Licensee may provide an Integrated Pest Management plan that describes planned pesticide use on a regular basis for the term of the license, which includes an annual reporting element.

The Licensee shall use on National Forest System land only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned. The Licensee must strictly follow label instructions in the preparation and application of pesticides and disposal of excess materials and containers.

Condition No. 8—Valid Claims and Existing Rights

This license is subject to all valid claims and existing rights of third parties. The United States is not liable to the Licensee for the exercise of any such right or claim.

Condition No. 9—Compliance with Regulations on National Forest System Lands

The Licensee shall comply with the regulations of the Department of Agriculture for activities on National Forest System lands, and all applicable Federal, State, county, and municipal laws, ordinances, or regulations in regards to the area or operations on or directly affecting National Forest System lands, to the extent those laws, ordinances or regulations are not

preempted by federal law.

Condition No. 10—Protection of United States Property

This condition has been combined with Condition 13.

Condition No. 11—Indemnification

The Licensee shall indemnify, defend, and hold the United States harmless for:

- any violations incurred under any laws and regulations applicable to, or
- judgments, claims, penalties, fees, or demands assessed against the United States caused by, or
- costs, damages, and expenses incurred by the United States caused by, or
- the releases or threatened release of any solid waste, hazardous substances, pollutant, contaminant, or oil in any form in the environment related to

the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license.

The Licensee's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property caused by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. Upon surrender, transfer, or termination of the license, the Licensee's obligation to indemnify and hold harmless the United States shall survive for all valid claims for actions that occurred prior to such surrender, transfer or termination.

Condition No. 12—Surveys, Land Corners

The Licensee shall avoid disturbance to all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments on National Forest System lands are destroyed by an act or omission of the Licensee, in connection with the use and/or occupancy authorized by this license, depending on the type of monument destroyed, the Licensee shall reestablish or reference same in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of

the Forest Service. Further, the Licensee shall ensure that any such official survey records affected are amended as provided by law.

Condition No. 13—Damage to Land, Property, and Interests of the United States

The Licensee has an affirmative duty to protect the land, property, and interests of the United States from damage arising from the Licensee's construction, maintenance, or operation of the project works or the works appurtenant or accessory thereto under the license. The Licensee's liability for fire and other damages to National Forest System lands shall be determined in accordance with the Federal Power Act and Standard Form L-1 Articles 22 and 24.

Condition No. 14—Risks and Hazards

As part of the occupancy and use of the project area, the Licensee has a continuing responsibility to reasonably identify and report all known or observed hazardous conditions on or directly affecting National Forest System lands within the project boundary that would affect the improvements, resources, or pose a risk of injury to individuals. Licensee will abate those conditions, except those caused by third parties or not related to the occupancy and use authorized by the License. Any non-emergency actions to abate such hazards on National Forest System lands shall be performed after consultation with the Forest Service. In emergency situations, the Licensee shall notify the Forest Service of its actions as soon as possible, but not more than 48 hours, after such actions have been taken. Whether or not the Forest Service is notified or provides consultation; the Licensee shall remain solely responsible for all abatement measures performed. Other hazards should be reported to the appropriate agency as soon as possible.

Condition No. 15—Consultation

Each year, the Licensee shall consult with the Forest Service with regard to measures needed to ensure protection and utilization of the National Forest resources affected by the project. The date of the consultation meeting will be mutually agreed to by the Licensee and the Forest Service but in general will be held 60 days prior to the beginning of the recreation season to facilitate implementation of flow management requirements and recreational management activities. Representatives from the U.S. Fish and Wildlife Service, California Department of Fish and Game, or other interested agency representatives concerned with operation of the project may request to attend the meeting.

Consultation shall include, but not be limited to:

- A status report regarding implementation of license conditions;

- Results of any monitoring studies performed over the previous year in formats agreed to by the Forest Service and the Licensee during development of study plans;
- Review of any non-routine maintenance;
- Discussion of any foreseeable changes to project facilities or features;
- Discussion of any necessary revisions or modifications to plans approved as part of this license;
- Discussion of needed protection measures for species newly listed as threatened, endangered, or sensitive or, changes to existing management plans that may no longer be warranted due to delisting of species or, to incorporate new knowledge about a species requiring protection; and
- Discussion of elements of current year maintenance plans, e.g. road maintenance.

A record of the meeting shall be kept by the Licensee and shall include any recommendations made by the Forest Service for the protection of National Forest System lands (NFSL) and resources. The Licensee shall file the meeting record, if requested by FS, with the Commission no later than 60 days following the meeting.

Copies of other reports related to project safety and non-compliance shall be submitted to the Forest Service concurrently with submittal to the FERC. These include, but are not limited to: any non-compliance report filed by the licensee, geologic or seismic reports, and structural safety reports for facilities located on or affecting NFSL.

The Forest Service reserves the right, after notice and opportunity for comment, to require changes in the project and its operation through revision of the 4(e) conditions to accomplish protection and utilization of National Forest lands.

III. Resource Protection Conditions

Condition No. 16-Heritage Resources

Licensee shall file with the Commission, within one year following license issuance, a Historic Properties Management Plan (HPMP) approved by the Forest Service, for the purpose of protecting and interpreting heritage resources located on National Forest System lands (NFS lands). The Licensee shall consult with the State Historic Preservation Officer, Native American Tribes, Forest Service, and other applicable agencies and communities during the preparation of the Plan. The HPMP shall accurately define the area of potential effects, including effects of implementing Section 4(e) conditions, Native American traditional cultural values, and Project-induced recreational impacts to archaeological properties on or affecting National Forest System lands. The HPMP shall also provide measures to mitigate the identified impacts, including a monitoring program, and management protocols for the ongoing protection of archaeological properties.

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If, prior to or during ground-disturbing activities or as a result of project operations, items of potential cultural, historical, archaeological, or paleontological value are reported or discovered, or a known deposit of such items is disturbed on NFS lands, the Licensee shall immediately cease work in the area affected, and implement the provisions in the HPMP.

Condition No. 17 – Protection of Forest Service Special Status Species

Before taking actions to construct new project features on NFS lands that may affect Forest Service special status species (i.e. Forest Service sensitive and/or management indicator species) or their critical habitat, the Licensee shall prepare a biological evaluation evaluating the potential impact of the action on the species or its habitat and submit it to the Forest Service for approval. In coordination with the Commission, the Forest Service may require mitigation measures for the protection of the affected species.

The biological evaluation shall

- Include procedures to minimize adverse effects to special status species.
- Ensure project-related activities shall meet restrictions included in site management plans for special status species.
- Develop implementation and effectiveness monitoring of measures taken or employed to reduce effects to special status species.

Condition No. 18-Invasive Weed Management

Within one year of license issuance, Licensee shall develop and file for Commission approval a plan to manage and reduce native and non-native invasive plant species populations on or affecting NFS lands. The plan shall be developed in conjunction with the Forest Service (FS), Bureau of Land Management (BLM), California Department of Fish and Game (DFG), and California Department of Parks and Recreation (DPR), *and in consultation with the Ecological Committee (EC)*, including specifically the U.S. Fish and Wildlife Service (USFWS). Prior to filing the plan for Commission approval, the Licensee shall: 1) submit the portion of the plan pertaining to National Forest System lands to the Forest Service for approval, 2) *submit the portion of the plan pertaining to BLM lands to BLM for approval*, 3) *submit the portion of the plan pertaining to DFG lands to DFG for approval*, and 4) *submit the portion of the plan pertaining to DPR lands to DPR for approval*. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Commission approval to use pesticides for noxious weed control constitutes the approval required by Condition 7.

- (b) The plan shall specify areas/acreage, treatment/control methods, best management practices, needs for multiple year treatments and monitoring, including an annual

inspection. The plan shall specifically address, but not be limited to, the following species: purple loosestrife (Lythrum salicaria); giant reed (Arundo donax), tree of heaven (Ailanthus altissima); scarlet wisteria (Sesbania punicea); parrot feather (Myriophyllum aquaticum); Himalayan blackberry (Rubus discolor); aquatic primrose (Ludwigia peploides); yellow starthistle (Centaurea solstitialis); Spanish broom (Spartium junceum); French broom (Genista monspessulana); Scotch broom (Cytisus scoparius); and skeleton weed (Chondrilla juncea).

- (c) *After coordination with the appropriate land management agency and then consultation with the EC, including specifically USFWS, the Licensee may modify the implementation measures contained within the plan without Commission approval to the extent the measures are within the scope of the approved plan. Any modification to the implementation measures that are not within the scope of the approved plan must be filed with the Commission for approval.*
- (d) The Licensee shall coordinate the plan and ongoing efforts with applicable federal, state and local agencies and shall take into full consideration state and federally listed species including Forest Service Sensitive species located on NFS lands.
- (e) In coordination with the FS, BLM, DFG, and DPR, the Licensee shall reevaluate the plan five years after initial implementation, *and shall consult with the EC*, including specifically USFWS, and any other applicable federal, state and local agencies regarding the reevaluation. The reevaluation shall take into consideration the need to treat other invasive plant species, as well as alternative or additional control methods that may be implemented.
- (f) Following license issuance, the Licensee shall file annually with the Commission a compliance report for informational purposes. The Licensee shall first prepare the report in coordination with the FS, BLM, DFG, and DPR, *and in consultation with the EC*, including specifically USFWS. The report as filed with the Commission shall include any comments *of EC members* and the Licensee's responses.
- (g) *The Licensee shall not be required to expend more than \$450,000 to develop and implement the plan during the first five years after issuance of this license, and shall not be required to expend more than (\$25,000) every year thereafter.*

Condition No. 19-Development of a Fuel Management Plan

Within one year of license issuance, the Licensee shall prepare for Forest Service approval and filing with the Commission, a Fuel Management Plan for National Forest System lands (NFS lands) located within the project area. The plan shall identify fuel management issues, prioritization, and recommended actions to address them. The plan encompassing NFS lands within the project area may be coordinated with the Oroville Facilities Relicensing Settlement Agreement, Appendix B, Fuel Load Management plan.

Enclosure 2
Oroville Project, FERC No. 2100
Final 4(e) Terms and Conditions

To clarify modifications between the Preliminary 4(e) Conditions and the enclosed Final 4(e) Conditions, we have included this crosswalk table.

#	Preliminary 4(e) Title	Final 4(e) Title	Remarks
1	Forest Service Reserves the Right to Revise Section 4(e) Conditions	Forest Service Reserves the Right to Revise Section 4(e) Conditions	No Change
2	Approval of Changes After Initial Construction	Approval of Changes	Minor changes
3	Surrender of License or Transfer of Ownership	Surrender of License or Transfer of Ownership	Minor Changes
4	Investigation of Project Related Fires	Fire Prevention, Response, and Investigation	Added requirements for fire prevention and response
5	Area Access	Access by the United States	Minor Changes
6	Maintenance of Improvements on or Affecting NFS lands	Maintenance of Improvements on or Affecting NFS lands	No Change
7	Pesticide Use Restrictions on NFS lands	Pesticide Use Restrictions on NFS lands	Modified to provide Licensee option to use Integrated Pest Management
8	Valid Claims and Existing Rights	Valid Claims and Existing Rights	No Change
9	Compliance with Regulations on NFS lands	Compliance with Regulations on NFS lands	Minor Changes
10	Protection of United States Property	Protection of United States Property	Combined with Condition 13
11	Indemnification	Indemnification	Reworded for consistency with FS policy
12	Surveys, Land Corners	Surveys, Land Corners	Minor Changes
13	Damage to Land, Property, and interests of the United States	Damage to Land, Property, and interests of the United States	Reworded for consistency with FS policy

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#	Preliminary 4(e) Title	Final 4(e) Title	Remarks
14	Risks and Hazards	Risks and Hazards	No Change
15	Consultation	Consultation	Expanded to define consultation requirements
16	Heritage Resources	Heritage Resources	No Change
17	Protection of Forest Service Special Status Species	Protection of Forest Service Special Status Species	No Change
18	Invasive Weed Management	Invasive Weed Management	No Change
19	Development of a Fuel Management Plan	Development of a Fuel Management Plan	No Change

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Submission Contents

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